

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

T.G.,

OAH Case No. 2010061310

Claimant,

v.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

DECISION

Nancy Beezy Micon, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on May 10, 2011, in Los Angeles, California.

T.G. (Claimant) was represented by her mother.¹ Claimant was not present at the hearing.

Johanna Arias, Fair Hearing Coordinator, represented the South Central Los Angeles Regional Center (SCLARC, Regional Center, or Service Agency).

Oral and documentary evidence was received, and the matter was submitted for decision at the conclusion of the hearing on May 10, 2011.

ISSUE

The sole issue to be determined is whether Regional Center, following the July 2009 amendments to the Lanterman Act, Welfare and Institutions Code section 4500, et seq., should continue to fund the services provided to Claimant by A & C Life Training Services.

¹ Initials have been used to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant is a 26-year-old Service Agency consumer with a diagnosis of Moderate Mental Retardation. The parties do not dispute her eligibility for services as a person with a developmental disability.

2. Claimant resides at home with her mother and a 16-year-old brother. Claimant is in adequate health although concern was expressed by Claimant's mother over the fact that Claimant is overweight. With assistance, Claimant can complete daily living skills, such as dressing, brushing her teeth, and bathing. She is ambulatory. Claimant has limited communication skills. She can use some short phrases and is able to identify objects. Claimant is, however, difficult to understand and is unable to communicate her needs and wishes. Claimant has some safety awareness but she requires supervision at all times. Claimant was described by her mother as a "smiley girl" who is happy and friendly.

3. Claimant's most recent individual program plan (IPP), prepared after a meeting on December 8, 2010, contains the objective/outcome to learn "correct socialization skills" and "to improve independence." In terms of the services and supports to help Claimant meet this objective/outcome, the IPP team agreed to continue to fund Claimant's attendance at two programs: (1) Milestones, an employment training program attended during the morning and early afternoon; and (2) A & C Life Skills Community Training program (A & C), a community integration program attended by Claimant in the afternoon. The Milestones program is listed in the IPP under the category of "School and Work" while the A & C program is listed in the IPP under "Community and Social Life." Claimant receives 66 hours per month of funding to attend the program at A & C. According to the IPP, the A & C program enables Claimant to integrate into society. Service Agency noted that Claimant's progress in both the Milestones and A & C programs would be monitored annually.

4. The Service Agency has funded Claimant's attendance at Milestones since her graduation from school at age 22. Claimant attends the program Monday through Friday, 9:00 a.m. to approximately 2:00 p.m. Service Agency also provides funding for Claimant's transportation to and from the program. In a quarterly report from Milestones, prepared March 31, 2011, it was recommended that Claimant continue to attend the program "to increase her job skills, as well as her social and adaptive skills."

5. A & C offers a community integration program. The program design material from A & C describes the program philosophy, as follows: "A & C Life Skills Training Services Community Integration Program is committed to providing a wide array of community-based skill development and training options for persons with developmental challenges, who would like to integrate into the community at large. The philosophical approach is based on the principle of normalization, in an integrative context. If true

development and skill acquisition is to occur, it is imperative to provide sufficient opportunities for practice in real-life, natural environments, where it is impossible to control all variables, but where potential discriminative cues exist. A variety of natural environments are necessary to maximize the opportunities for learning. Thereby providing the context, for people challenged with developmental disabilities, to realize and reach their maximum potentials.”

6. On May 7, 2010, Service Agency notified Claimant that it was terminating funding for her “community activity service” at A & C Life Training Services. The stated reason for the decision was set forth in a “Notice of Proposed Action Letter,” as follows: “Due to the state’s budget reductions, several changes were made to the Lanterman Act through a Trailer Bill that now prohibits the South Central Los Angeles Regional Center from paying for certain services including social recreation, camps, experimental therapies, and non-medical therapies like art, dance and music.” Service Agency did not specify the category under which it was proposing to terminate funding for the A & C program. At hearing, SCLARC contended the program at A & C fell within the “social recreation activities” category.

7. Claimant timely filed a request for an administrative hearing, noting that Claimant would be negatively affected if she were to lose the service.

8. Claimant does not dispute that there are social and recreational components to the A & C program. Claimant acknowledges, for example, that Claimant is able to walk around a track if the program activity is in the park. Edwin Tsai, Claimant’s service coordinator, described the A & C program as one in which Claimant is able to learn skills to be with others in the community. He acknowledges that he does not know the details concerning the daily program activities. According to Tsai, the Milestone program is a behavior and work skills program whereas the A & C program focuses on social skills training. Saul Lopez, the program manager who supervises Tsai, determined that the service Claimant receives at the A & C program falls within the Trailer Bill because a computer search revealed that the A & C program had a service code that fell within social recreation. Lopez described the A & C program as being a socialization program in a structured environment.

9. Claimant’s mother testified at the hearing. She described the hardship that would occur should Claimant no longer be able to attend the A & C program. Claimant’s mother works full-time. Claimant leaves home at approximately 7:15 a.m. to attend the program at Milestones, which ends at approximately 1:30 p.m. Claimant currently attends the program at A & C in the afternoon. If the program is terminated, Claimant would arrive home at approximately 2:30 p.m., and there is currently no one available to care for her. Claimant’s grandmother, who is elderly and used to assist with Claimant’s care, is no longer available to assist to the same extent as before. Claimant’s mother believes the A & C program has had a beneficial effect on Claimant.

10. No evidence was presented at the hearing to establish that Claimant's needs have changed since the IPP decision to fund the A & C program, or that she will no longer benefit from continued participation in it. Claimant has opportunities for interaction with peers and family. However, these opportunities were also available when the IPP team concluded in December 2010 that the program at A & C would be appropriate for Claimant.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal, as set forth in factual finding numbers 1-10, and legal conclusion numbers 2-11.

2. In enacting the Lanterman Developmental Disabilities Services Act in 1977 (Lanterman Act), Welfare and Institutions Code² section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community . . . and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. Under the Lanterman Act, the "State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." (Welf. & Inst. Code, § 4501.)

4. Section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives. The statute defines services and supports for persons with developmental disabilities as "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." Services and supports may include "recreation" and "community integration services." (§ 4512, subd. (b).) The services and supports are to be "flexible and individually tailored to the consumer and, where appropriate, his or her family." (§ 4648, subd. (a)(2).)

5. In this instance, Service Agency and Claimant's family, through the prescribed IPP process, have determined that the services provided by A & C are appropriate services and

² All further references are to the Welfare and Institutions Code.

supports to address Claimant's community integration and socialization needs arising from her mental retardation. The services foster Claimant's independence and integration into the community. It was not established that Claimant's needs that led to funding for the services have changed so that the service is no longer appropriate. Nor was it established that Claimant will no longer benefit from continued participation in the A & C program. Moreover, no IPP meeting has been held to modify or discontinue the services. The only reason Service Agency sought to terminate funding for Claimant's attendance at A & C was the enactment of the Trailer Bill.

6. Notwithstanding the sweeping responsibilities imposed on regional centers to ensure that California's developmentally disabled population receives the services and supports required under the Lanterman Act, due to the current fiscal and economic crisis in California and nationally, the Legislature passed legislation, including section 4648.5, which, effective July 1, 2009, suspended a regional center's authority to purchase certain services pending implementation of more permanent budgetary solutions. Service Agency relied on section 4648.5 in support of its decision to terminate funding for the A & C program. Section 4648.5 provides, in pertinent part:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

- (1) Camping services and associated travel expenses.
- (2) Social recreation activities, except for those activities vendored as community-based day programs.
- (3) Educational services for children three to 17, inclusive, years of age.
- (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

7. As Service Agency seeks to terminate an on-going service, it bears the burden of proof by a preponderance of the evidence. Regional Center has not met its burden.

8. In this case, the services provided by A & C do not fall within the express definition of the services targeted by section 4648.5. They are not camping services, social recreation activities, educational services, or nonmedical therapies, such as specialized recreation, art, dance, or music. Rather, the services are directed toward addressing Claimant's integration into society. Accordingly, this statute may not be relied upon to suspend funding for the agreed upon services and supports.

9. Service Agency has failed to establish that the services provided by A & C to Claimant in this case fall within the types of services the Legislature intended to suspend by its enactment of section 4648.5. No evidence was presented by Service Agency to show that the service provided to Claimant by A & C is a social recreation activity. SCLARC was unable to describe, for example, what activities Claimant participated in at the program. The service agency, during the IPP meeting that took place in December 2010, after the enactment and implementation of section 4648.5, agreed that it should fund the A & C program for Claimant, in part, to help Claimant improve her independence. The decision to propose the termination of the service was apparently based solely upon the categorization of the program in a computer service code. The actual description of the program, however, indicates that it is, in fact, a community integration program, akin to a community-based day program.

10. There is no definition of the term "social recreation activities" in section 4648.5. The fact that section 4512 differentiates between a service providing "recreation" and one providing "community integration" indicates that a community integration service is different from a social recreation service. The evidence here confirmed that difference. As set forth in Findings 3, 5 and 8, the services provided to Claimant through her attendance at the A & C program assist Claimant in achieving a greater degree of independence and community integration. As a result, Service Agency failed to show that the services provided to Claimant at the A & C program are the type of service covered by section 4648.5, regardless of the category under which such services are coded. "A statute must be construed 'in the context of the entire statutory system of which it is a part, in order to achieve harmony among the parts.'" (*People v. Hull* (1991) 1 Cal.4th 266, 272 (citations omitted).) If two provisions are in

conflict, courts do not lightly imply repeal by implication of one unless the provisions are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. (*Stop Youth Addiction, Inc., v. Lucky Stores, Inc.* (1968) 17 Cal.4th 553, 569; *People v. Hazelton* (1996) 14 Cal.4th 101, 122; and *County of Santa Barbara v. Connell* (1999) 72 Cal.App.4th 175, 186.) Harmonization thus avoids rendering provisions surplusage or repealing them by implication.

11. Because Service Agency failed to meet its burden of proof with respect to showing that the services Claimant receives at the A & C program come within the prohibition of section 4648.5, Claimant was not required to prove that such services are a primary or critical means for ameliorating the physical, cognitive, or psychosocial effect of her developmental disability or that the services were required to enable her to remain in her home.

ORDER

Claimant's appeal is sustained. The regional center shall continue to fund the cost of claimant's participation in the program at A & C Life Skills Training Services.

DATED: May 23, 2011

Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings

NOTICE

THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.